

1745

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Art Unit : 1745
Examiner : Jonathan Crépeau
Serial No. : 09/774,827
Filed : January 29, 2001
Inventors : Manfred Kilb

Customer No.: 35811

Confirmation No.: 2860

: Eduard Pytlik
: Dejan Llic
: German Schulz
: Thomas Koke

Docket No.: 1540-00

Title : GASTIGHT-SEALED ALKALINE
: STORAGE BATTERY IN THE
: FORM OF A BUTTON CELL

Dated: March 30, 2004

TRANSMITTAL LETTER

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

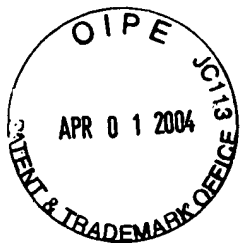
Sir:

Enclosed herewith is a copy of a Chinese Official Action dated February 13, 2004 along with the English translation. We note that the publications cited in the Official Action were previously submitted to the PTO in a Supplemental Information Disclosure Statement dated April 18, 2003.

Respectfully submitted,

T. Daniel Christenbury
Reg. No. 31,750

TDC:ks
(215) 656-3381



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Art Unit : 1745 **Customer No.: 35811**
Examiner : Jonathan Crepeau
Serial No. : 09/774,827
Filed : January 29, 2001 **Confirmation No.: 2860**
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Title : GASTIGHT-SEALED ALKALINE
: STORAGE BATTERY IN THE
: FORM OF A BUTTON CELL **Dated: March 30, 2004**

Commissioner for Patents
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Alexandria, VA 22313-1450

Sir:

Certificate of Mailing Under 37 CFR 1.8

For

Postcard

Transmittal Letter

Copy of Chinese Official Action dated February 13, 2004

English Translation of Chinese Official Action

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date appearing below.

Name of Applicant, Assignee, Applicant's Attorney
or Registered Representative:

Piper Rudnick LLP
Customer No. 035811

By: 

Date: 30 MAR 2004

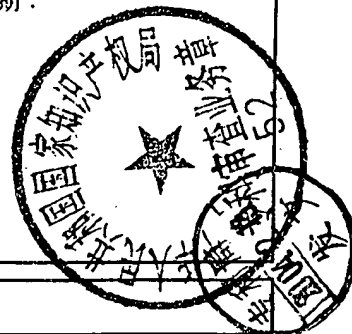


中华人民共和国国家知识产权局

邮政编码:

香港湾仔港湾道 23 号鹰君中心 22 字楼
中国专利代理(香港)有限公司
苏娟

发文日期:



申请号: 01104749.6

申请人: 瓦尔达微电池有限责任公司

发明名称: 钮扣电池形式的气密封碱性蓄电池

第一次审查意见通知书

0042249

1. ☒ 依申请人提出的实审请求, 根据专利法第 35 条第 1 款的规定, 审查员对上述发明专利申请进行实质审查。
☐ 根据专利法第 35 条第 2 款的规定, 国家知识产权局决定自行对上述发明专利申请进行审查。
2. ☒ 申请人要求以其在:

DE	专利局的申请日	2000 年 2 月 23 日	为优先权日。
	专利局的申请日		为优先权日。
	专利局的申请日		为优先权日。
	专利局的申请日		为优先权日。

☐ 申请人已经提交了经原申请国受理机关证明的第一次提出的在先申请文件的副本。
☐ 申请人尚未提交经原申请国受理机关证明的第一次提出的在先申请文件的副本, 根据专利法第 30 条的规定视为未提出优先权要求。
3. ☐ 申请人于____年__月__日和____年__月__日提交了修改文件。
 经审查, 其中: ____年__月__日提交的____不符合实施细则第 51 条的规定;
 ____年__月__日提交的____不符合专利法第 33 条的规定。
4. ☒ 审查是针对原始申请文件进行的。
☐ 审查是针对下述申请文件进行的:

说明书	申请日提交的原始申请文件的第____页: ____年__月__日提交的第____页; ____年__月__日提交的第____页; ____年__月__日提交的第____页; ____年__月__日提交的第____页;
权利要求	申请日提交的原始申请文件的第____项: ____年__月__日提交的第____项; ____年__月__日提交的第____项; ____年__月__日提交的第____项; ____年__月__日提交的第____项;
附图	申请日提交的原始申请文件的第____页: ____年__月__日提交的第____页; ____年__月__日提交的第____页; ____年__月__日提交的第____页; ____年__月__日提交的第____页;
说明书摘要	<input type="checkbox"/> 申请日提交的: ____年__月__日提交的;
摘要附图	<input type="checkbox"/> 申请日提交的: ____年__月__日提交的;
5. ☐ 本通知书是在未进行检索的情况下作出的。
☒ 本通知书是在进行了检索的情况下作出的,
☒ 本通知书引用下述对比文献(其编号在今后的审查过程中继续沿用):

28 JUN 2004

2/30
2002.1



回函请寄: 100088 北京市海淀区蓟门桥西土城路 6 号 国家知识产权局专利局受理处收
(注: 凡寄给审查员个人的信函不具有法律效力)



中华人民共和国国家知识产权局

编号	文件号或名称	公开日期 (或抵触申请的申请日)
1	US5981108	1999. 11. 09
2	JP61216269	1986. 09. 25
3	US3455739	1969. 07. 15
4	GB2254478	1991. 03. 19

6. 审查的结论性意见:

☒ 关于说明书:

- ☐ 申请的内容属于专利法第 5 条规定的不授予专利权的范围。
- ☐ 说明书不符合专利法第 26 条第 3 款的规定。
- ☐ 说明书不符合专利法第 33 条的规定。
- ☒ 说明书的撰写不符合实施细则第 18 条的规定。

☒ 关于权利要求书:

- ☒ 权利要求 1-2 不具备专利法第 22 条第 2 款规定的新颖性。
- ☒ 权利要求 3-7 不具备专利法第 22 条第 3 款规定的创造性。
- ☐ 权利要求 ____ 不具备专利法第 22 条第 4 款规定的实用性。
- ☐ 权利要求 ____ 属于专利法第 25 条规定的不授予专利权的范围。
- ☐ 权利要求 ____ 不符合专利法第 26 条第 4 款的规定。
- ☐ 权利要求 ____ 不符合专利法第 31 条第 1 款的规定。
- ☐ 权利要求 ____ 不符合专利法第 33 条的规定。
- ☐ 权利要求 ____ 不符合实施细则第 2 条第 1 款关于发明的定义。
- ☐ 权利要求 ____ 不符合实施细则第 13 条第 1 款的规定。
- ☒ 权利要求 3, 5, 6, 7 不符合实施细则第 20 条至第 23 条的规定。

上述结论性意见的具体分析见本通知书的正文部分。

7. 基于上述结论性意见, 审查员认为:

- ☐ 申请人应依照通知书正文部分提出的要求, 对申请文件进行修改。
- ☐ 申请人应在意见陈述书中论述其专利申请可以被授予专利权的理由, 并对通知书正文部分中指出的不符合规定之处进行修改, 否则将不能授予专利权。
- ☒ 专利申请中没有可以被授予专利权的实质性内容, 如果申请人没有陈述理由或者陈述理由不充分, 其申请将被驳回。
- ☐

8. 申请人应注意下述事项:

- (1) 根据专利法第 37 条的规定, 申请人应在收到本通知书之日起的 肆 个月内陈述意见。如果申请人无正当理由逾期不答复, 其申请将被视为撤回。
- (2) 申请人对其申请的修改应符合专利法第 33 条的规定, 修改文本应一式两份, 其格式应符合审查指南的有关规定。
- (3) 申请人的意见陈述书和/或修改文本应邮寄或递交给国家知识产权局专利局受理处, 凡未邮寄或递交给受理处的文件不具备法律效力。
- (4) 未经预约, 申请人和/或代理人不得前来国家知识产权局专利局与审查员举行会晤。

9. 本通知书正文部分共有 2 页, 并附有下列附件:

- ☒ 引用的对比文件的复印件共 4 份 22 页, ☐

审查 3 部 1 室

审查员签章: 3



完成日期: 2004-01-18

21:301
2002.1



回函请寄: 100088 北京市海淀区前门桥西土城路 6 号 国家知识产权局专利局受理处收
(注: 凡寄给审查员个人的信函不具有法律效力)



第一次审查意见通知书正文

1. 申请文本中多次出现“金属的范围”和“有效质量”，根据审查员的理解，“金属的范围”在本申请中的含义是“金属区域”或“金属层”，“有效质量”在申请文本的含义是“活性物质”。
2. 关于权利要求 1，对比文件 1 公开了一种气密封镍镉电池的多孔的金属泡沫的骨架（说明书第 2 栏 30-45 行），还公开了一种被压缩了的金属泡沫，并且在泡沫的空隙里面充满了镍金属的粉末，此部分金属泡沫中不含活性物质（权利要求 5，7），这相当于金属区域，它在对比文件中解决的技术问题也是实现正电极与电池壳的良好接触。由此可见，权利要求 1 的技术特征已经在对比文件 1 中公开，两者属于同一技术领域，采用相同的技术方案，解决的技术问题相同，预期效果相同。因此，权利要求 1 不具备专利法第二十二条第二款的新颖性。
3. 关于从属权利要求 2，根据说明书，权利要求 2 的电极是指正电极。对比文件 1（说明书第 6 栏第 40-60 行）公开了一个金属区域的数值范围，它占据整个电极总厚度的 1%至 5%（相当于在正电极中占 2%至 10%）。根据审查指南 3.2.4 的第 3 条，对比文件公开的数值(10%)落在权利要求 2 限定的数值范围内，因此，权利要求 2 也不具备专利法第二十二条第二款规定的新颖性。
4. 关于从属权利要求 3，对比文件 2（说明书附图及其说明，权利要求 2）公开了一种电极的中心空腔，此中心空腔用来容纳用于浸渍电极所必需的电解液，同时，还公开了空腔的直径为 1-2mm，最好是 1.5mm，电极的直径为 11.6 mm（实施例 1），这相当于空腔占电极体积的 8.6%至 17.2%。根据审查指南 3.2.4 第 3 条，对比文件已公开了权利要求 3 要求的范围。因此，权利要求 3 相对于对比文件 1 和 2 的结合来说，不具备突出的实质性特点和显著的进步，不具备专利法第二十二条第三款规定的创造性。
5. 关于从属权利要求 4，对比文件 2（出处同上）公开了一种两个电极都具有中心空腔的结构，并且解决的技术问题仍是容纳用于浸渍电极所必需的电解液。因此，当其引用的权利要求 1 和 2 相对于对比文件 1 不具备新颖性时，权利要求 4 不具备专利法第二十二条第三款规定的创造性。
6. 关于从属权利要求 5，对比文件 3（参见说明书附图 5 及其说明，权利要求



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1-11) 也公开了一种凹槽, 此凹槽位于电极的表面上, 其解决的技术问题是保证良好的换气和快速的气体耗用。由此可见, 权利要求 5 的附加技术特征已公开于对比文件 3, 并且将对比文件 1、2 和 3 的结合, 本领域技术人员容易得到该技术。因此, 权利要求 5 不具备突出的实质性特点和显著的进步, 不具备专利法第二十二条第三款规定的创造性。

7. 关于从属权利要求 6, 其公开的数值范围, 对本领域技术人员来说, 很容易根据常规实验获得。因此, 当其所引用的权利要求 5 不具备创造性时, 权利要求 6 也不具备专利法第二十二条第三款规定的创造性。

8. 关于从属权利要求 7, 对比文件 4(说明书附图及其说明, 权利要求 18-19), 中也公开了一种气密封电池中的弹簧, 它位于负电极和电池壳之间, 解决的技术问题也是提高电极的稳定性。由此可见, 权利要求 7 的附加技术特征已公开于对比文件 4, 并且本领域技术人员容易将对比文件 1, 2, 3, 4 相结合, 得到该技术方案。因此, 权利要求 7 不具备突出的实质性特点和显著的进步, 不具备专利法第二十二条第三款规定的创造性。

9. 此外, 本申请还存在以下缺陷:

- (1). 权利要求 3 和 6 中的用语“最好”、“最好是”和“大约”、“左右”, 会导致保护范围不清楚, 不符合专利法实施细则第二十条第一款的规定。
- (2). 权利要求 5 和 7 本身为多项从属权利要求, 又分别引用了在前的多项从属权利要求, 并且多项从属权利要求 7 采用了非择一引用形式, 因而不符合专利法实施细则第二十三条第二款的规定。
- (3). 说明书第一页第八段中“由权利要求 1 所述”和“见从属权利要求所述”不符合专利法实施细则第十八条第三款的规定。
- (4). 说明书第二页的第二段中“范围 8”和第六段中“部位 8”, 为同一附图的同一部分, 但是附图标记不一致。不符合专利法实施细则第十九条第三款的规定。

基于上述理由, 该申请的全部权利要求不具备新颖性或创造性, 同时说明书中也没有记载其它任何可以授予专利权的实质性内容, 该申请也不具备授予专利权的前景, 除非申请人能够在本通知书指定的四个月答复期内提出表明该申请具有新颖性或创造性的充分理由, 否则改申请将被驳回。

CPME0042249

Patent Office of the People's Republic of China

Address : Receiving Section of the Chinese Patent Office, No. 6 Tucheng Road West, Haidian District, Beijing, Postal code: 100088

Applicant	VARTA MICROBATTERY GMBH			Seal of Examiner	Date of Issue
Agent	China Patent Agent (H.K.) Ltd.				February 13, 2004
Patent Application No.	01104749.6	Application Date	February 22, 2001	Exam Dept.	
Title of Invention	GASDICHT VERSCHLOSSENER ALKALISCHER AKKUMULATOR IN FORM EINER KNOPFZELLE				

First Office Action

1. ☒ Pursuant to the provision of Article 35 (1) of the Chinese Patent Law, the examiner made an examination as to substance of the captioned patent application for invention upon the request for substantive examination filed by the applicant on _____.
- ☐ Pursuant to the provision of Article 35 (2) of the Chinese Patent Law, the Chinese Patent Office has decided to conduct on its own initiative an examination as to substance of the captioned patent application for invention.
2. ☒ The applicant requests taking the filing date, Feb 23, 2000, at the DE Patent Office, the filing date, _____, at the _____ Patent Office, the filing date, _____, at the _____ Patent Office as the priority date of the present application.
- ☐ A copy of the first filed patent application certified by the receiving organ of the initial country of filing has been submitted by the applicant.
- ☐ A copy of the first filed patent application certified by the receiving organ of the initial country of filing has not been submitted by the applicant. Pursuant to the provision of Article 30 of the Chinese Patent Law, no priority right shall be deemed to have been claimed.
3. ☐ The applicant filed amended application document(s) on _____ and _____.
- ☐ Examination has confirmed that _____ filed on _____ cannot be accepted, _____ filed on _____ cannot be accepted,
- as the above amendment(s) ☐ is/are not in conformity with the provision of Article 33 of the Chinese Patent Law.
- ☐ is/are not in conformity with the provision of Rule 51 of the Implementing Regulations of the Chinese Patent Law.

☐ For the specific reason that the amendment(s) cannot be accepted, see the text of the Office Action.

4. ☒ The examination is conducted in the light of the original application document(s)

☐ The examination is conducted in the light of the following application document(s):
in the original application documents submitted on the filing date:

Claim(s) _____, page(s) _____ of the description, Figure(s) _____
of the drawing(s); Claim(s) _____, page(s) _____ of the description,
Figure(s) _____ submitted on _____; Claim(s) _____, page(s) _____
of the description, Figure(s) _____ submitted on _____

☐ Abstract of the description submitted on _____.

5. ☐ The present Office Action has been prepared without a search having been conducted.

☒ The present Office Action has been prepared with a search having been conducted.

☒ The following reference document(s) is/are cited in this Office Action (its/their serial number(s) will, continue to be used throughout the examination procedure):

No.	Number or Title of Document	Date of Publication (or filing date of interfering application)
1	US5981108	(Date) Nov 9, 1999
2	JP61216269	(Date) Sep 25, 1986
3	US3455739	(Date) Jul 15, 1969
4	GB2254478	Mar 19, 1991
5		
6		

6. The concluding comments of the examiner are:

☒ On the description:

☐ The content of the application comes within the scope where no patent right is granted as provided in Article 5 of the Patent Law.

☐ The description is not in conformity with the provision of Article 26(3) of the Patent Law.

☒ The drafting of the description is not in conformity with the provision of Rule 18 of the Implementing Regulations.

☒ On the claims:

☐ Claim comes within the scope where no patent right is granted as provided in Article 25 of the Patent Law.

☐ Claim is not in conformity with the definition of invention in Rule 2(1) of the Implementing Regulations.

☒ Claim 1-2 does not possess novelty as provided in Article 22(2) of the Patent Law.

☒ Claim 3-7 does not possess inventiveness as provided in Article 22(3) of the Patent Law.

- ☐ Claim _____ does not possess practical applicability as provided in Article 22(4) of the Patent Law.
- ☐ Claim _____ is not in conformity with the provision of Article 26(4) of the Patent Law.
- ☐ Claim _____ is not in conformity with the provision of Article 31(1) of the Patent Law.
- ☒ Claim 3.5.6.7 is not in conformity with the provisions of Rules 20-23 of the Implementing Regulations.
- ☐ Claim _____ is not in conformity with the provision of Article 9 of the Patent Law.
- ☐ Claim _____ is not in conformity of the provision of Rule 12(1) of the Implementing Regulations.

For specific analyses of the above concluding comments, see the text of this Office Action.

7. In view of the above concluding comments, the examiner holds that:

- ☐ The applicant should amend the application document in accordance with the requirements raised in the text of this Office Action. The amended document(s) should be submitted in duplicate and should conform to the provisions of Article 33 of the Patent Law and Rule 51 of the Implementing Regulations of the Chinese Patent Law.
- ☐ The applicant should expound in his Observations the reasons why the captioned patent application is patentable and amend the places not conforming to regulations as pointed out in the text of the Office Action, otherwise it would be impossible for the patent right to be granted.
- ☒ The captioned patent application contains no substantive content for which the patent right may be granted, thus if the applicant has not advanced his reasons or has not done so adequately, the application will be rejected.

8. The applicant should pay attention to the following matters:

- (1) In accordance with the provision of Article 37 of the Patent Law, the applicant should submit his/its Observations within **four** months from the date of receipt of this Office Action; if, without any justified reason, the time limit for making response is not met, the application will be deemed to have been withdrawn.
- (2) The amendments made by the applicant to his application should conform to the provision of Article 33 of the Patent Law, the amended text should be in duplicate and the format should conform to the relevant provisions of the Guidelines for Examination.
- (3) The applicant's Observations or amended text should be mailed or presented to the Receiving Section of the Chinese Patent Office. Document no mailed or presented to the Acceptance Section have no legal force.
- (4) Without making an appointment, the applicant and/or agent may not come to the Chinese Patent Office to hold an interview with the examiner.

9. This Office Action consists of the text portion totalling 2 page(s) and of the following annex(es):

- ☒ 4 duplicate copies of the reference document(s) cited totalling 22 page(s).